

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of new rules I through IX and)	ON PROPOSED ADOPTION AND
the repeal of ARM 17.36.901)	REPEAL
through 17.36.903 and)	
17.36.907 through 17.36.910)	
pertaining to Subsurface)	(WATER QUALITY)
Wastewater Treatment Systems)	

TO: All Interested Persons

1. On November 18, 2002 at 1:30 p.m., in conjunction with the hearing for MAR Notice No. 17-177 and 17-178, the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 6, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The proposed new rules will read as follows:

NEW RULE I SCOPE (1) These rules are intended to protect the public health, safety, and welfare by setting forth minimum standards for the construction, alteration, repair, extension, and use of wastewater treatment systems within the state.

(2) Under 50-2-116, MCA, local boards of health must adopt regulations no less stringent than this subchapter 9 for wastewater treatment systems for private and public buildings installed after October 1, 1991.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: In this rule notice, the board is proposing to modify its current rules in ARM Title 17, chapter 36, subchapter 9, which establish minimum standards for counties

to follow when regulating wastewater treatment systems. Although these modifications appear as new rules, the actual changes to current rules are not extensive. Because some amendments addressed new subjects, it was necessary initially to create several new rules. However, because of limited codification space in the existing rules, it then became necessary to recodify all of the current rules under new numbers, in order to allow for a logical rule ordering. Any significant changes to a current rule are discussed in the rationale statements for the respective new rule.

The amendments are based on the recommendations of the department and an advisory stakeholders group. The advisory group and the department have been meeting for over two years to review and update the provisions of the department's subdivision rules, the board's minimum wastewater standards, and the department Circular DEQ-4, "Montana Standards for On-Site Subsurface Sewage Treatment Systems". The amendments proposed in this rule notice would make changes to the current rules and would adopt a revised version of department Circular DEQ-4.

New rule I contains minor changes to the current ARM 17.36.901. The terms "repair" and "use" are added to the first subsection, which is necessary to clarify that the minimum standards in this subchapter apply to repair and use of wastewater systems. The term "onsite" has been stricken because these rules also apply to systems that may not be located at the site where the structure requiring wastewater treatment is located.

NEW RULE II DEFINITIONS (1) "Absorption bed" means an absorption system that consists of excavations greater than three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(2) "Absorption trench" means an absorption system that consists of excavations less than or equal to three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(3) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater.

(4) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

(5) "Department" means the Montana department of environmental quality.

(6) "Drainage way" means a course or channel along which stormwater moves in draining an area.

(7) "Dwelling" or "residence" means any structure, building or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.

(8) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in department Circular DEQ-4, 2002 edition, DEQ-2, 1999 edition, or this subchapter.

(9) "Failed system" means a wastewater treatment and/or disposal system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of [NEW RULE III].

(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency except for sheet flood areas that receive less than one foot of water per occurrence and are considered zone b areas by the federal emergency management agency. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) "Gray water" means wastewater other than toilet wastes or industrial chemicals including, but not limited to, shower and bath wastewater, kitchen wastewater, and laundry wastewater.

(12) "Ground water observation well" means a well installed for the purpose of measuring the depth from the natural ground surface to the seasonally high groundwater.

(13) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose or treat the wastewater.

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 120 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial structure. The total number of people served may not exceed 24.

(16) "Limiting layer" means bedrock, an impervious layer, or seasonally high groundwater.

(17) "Living unit" means the area under one roof occupied by a family. For example, a duplex is considered two living units.

(18) "Multiple user wastewater system" means a non-public wastewater system that serves or is intended to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed

24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(19) "Municipal" means pertaining to an incorporated city or town.

(20) "Package plants" means wastewater treatment systems that are sealed within a watertight container and contain components for the secondary and tertiary treatment of wastewater.

(21) "Percolation test" means a standardized test used to assess the infiltration rate of soils.

(22) "Piped water system" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(23) "Pit privy" means a pit that receives undiluted, non-water-carried toilet wastes.

(24) "Replacement system" means a wastewater treatment system proposed to replace a failed, failing, or contaminating system.

(25) "Reviewing authority" means a local board of health or local health officer, as those terms are defined in 50-2-101, MCA, or their designees.

(26) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

(27) "Seasonally high groundwater" means the depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

(28) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(29) "Septic tank" means a storage settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(30) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial structures. The total people served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(31) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(32) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(33) "Soil profile" means a description of the soil strata to a depth of eight feet using the USDA soil classification system.

(34) "Subsurface wastewater treatment system" means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(35) "Variance" means the grant, pursuant to [NEW RULE VIII], by the reviewing authority of an exception to the minimum requirements set out in this subchapter or department Circular DEQ-4, 2002 edition.

(36) "Wastewater" means water-carried waste that is discharged from a dwelling, building, or other facility, including:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(37) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, pit privies and experimental systems.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule II recodifies current definitions and proposes some new definitions. New definitions are proposed for the following terms: "absorption trench", "drainage way", "dwelling or residence", "experimental system", "floodplain", "gray water", "ground water observation well", "individual wastewater system", "living unit", "multiple user wastewater system", "municipal", "package plants", "percolation tests", "piped water system", "pit privy", "reviewing authority", "septic tank", "shared wastewater system", "site evaluation", "slope", "soil profile", "subsurface wastewater treatment system", "variance", and "wastewater treatment system". These definitions are necessary to clarify the meaning of terms used in the current rules and in the new amendments, and to conform

the meanings of those terms to their use in department subdivision rules and department Circular DEQ-4.

Minor changes to other definitions were made for clarification of the current meaning, and to conform the language to that used in the definitions of the same terms as set out in department circulars and department rules.

NEW RULE III GENERAL REQUIREMENTS (1) No person may construct, alter, extend, or utilize a wastewater treatment or disposal system that may:

(a) contaminate any actual or potential drinking water supply;

(b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;

(c) cause a public health hazard by being accessible to persons or animals;

(d) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter;

(e) pollute or contaminate state waters, in violation of 75-5-605, MCA;

(f) degrade state waters unless authorized pursuant to 75-5-303, MCA; or

(g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule III contains a minor modification to the current ARM 17.36.902. The current rule states that "It is illegal to construct". The amended rule would state that "No person may construct". The amendment is necessary to state the prohibition in terms that are commonly used in administrative rules.

NEW RULE IV WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) Except as provided in [NEW RULE V], all wastewater treatment systems must be designed and constructed in accordance with the applicable requirements in [NEW RULE III] and in department Circular DEQ-4, 2002 edition.

(2) Department Circular DEQ-4, 2002 edition, which sets forth standards for subsurface sewage treatment systems is adopted and incorporated by reference for purposes of this subchapter. Copies are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(3) Wastewater treatment systems must be located to maximize the vertical separation distance from the bottom of the absorption trench to the seasonally high groundwater level, bedrock, or other limiting layer, but under no circumstances may this vertical separation be less than four feet of natural soil.

(4) A replacement area or replacement plan must be provided for each new or expanded wastewater treatment system. Replacement areas and plans must comply with the requirements of this subchapter.

(5) A site evaluation must be performed for each wastewater treatment system. As determined by the reviewing authority, the site evaluation may include the following:

(a) soil descriptions for proposed wastewater treatment systems. Soil descriptions must be based on data obtained from test holes within 25 feet of each wastewater treatment location. Test holes must be at least eight feet in depth unless a limiting layer precludes digging to eight feet;

(b) percolation test results within the boundaries of the proposed wastewater treatment system; and

(c) if the applicant or the reviewing authority has reason to believe that groundwater will be within seven feet of the surface at any time of the year within the boundaries of the system, the applicant must provide data to demonstrate that the minimum separation distance required by (3) between the absorption trench bottom and the seasonally high groundwater level can be maintained. The reviewing authority may require the applicant to install ground water observation wells to a depth of at least eight feet to determine the seasonally high groundwater level. The applicant shall monitor the observation wells through the seasonally high groundwater period. Measurement must occur for a long enough period of time to detect a peak and a sustained decline in the groundwater level.

(6) If a department-approved public collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed system, and the owner or managing entity of the public collection and treatment system approves the connection, wastewater must be discharged to the public system. For purposes of this rule:

(a) a public system is not "readily available" if there is evidence demonstrating that connection to the system is physically or economically impractical, or that easements cannot be obtained; and

(b) a connection is "economically impractical" if the cost of connection to the public system equals or exceeds

three times the cost of installation of an approvable system on the site.

(7) Wastewater treatment systems, except for sealed components that are designed, constructed, and tested as set out in [NEW RULE VI], may not be located in drainage ways.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule IV recodifies some of the requirements of current ARM 17.36.907. New provisions are proposed in (4) (replacement areas), (5) (site evaluations), and (7) (prohibition against location in drainage ways). The provisions in (4) require that replacement areas be provided for new and expanded wastewater systems. Replacement areas are necessary to prevent pollution from wastewater systems that fail or reach the end of their service life. The provisions in (5) require site evaluation for proposed wastewater treatment systems, and set out specifications for site evaluation methods. At the discretion of the reviewing authority, a site evaluation may include soil descriptions and/or percolation tests. Site evaluations are necessary to prevent pollution from improperly located wastewater systems, and specifications for site evaluations are necessary to provide guidance to the reviewing authority and the public of proper methodology. The provisions in (7) prohibit location of wastewater treatment systems in drainage ways. This prohibition is necessary in order to prevent pollution caused by flooding of wastewater systems, and to make these rules consistent with department subdivision regulations.

Subsection (6) has been modified to include a 200-foot radius condition for hookups to public systems. This requirement is necessary in order to provide an outside limit within which the reviewing authority can require hookups to public systems. The 200-foot limit is currently used in some county regulations. Subsection (6) has also been modified to clarify the terms "readily available" and "economically impractical". Clarification of these terms is necessary to provide guidance to the reviewing authority and to the regulated community about when hookups to public systems are required.

Setback distances in the current ARM 17.36.907 have been moved to new rule VI.

NEW RULE V ABSORPTION BEDS, HOLDING TANKS, SEEPAGE PITS,
PIT PRIVIES, CESSPOOLS - TECHNICAL REQUIREMENTS AND
PROHIBITIONS

(1) The wastewater treatment systems described in (3) through (7) may be allowed only if the reviewing authority determines that:

(a) site constraints prevent the applicant from constructing any system described in department Circular DEQ-4, 2002 edition;

(b) all off-site treatment alternatives have been considered and are infeasible;

(c) the requirements of [NEW RULE III] are met; and

(d) all other requirements in this subchapter applicable to the proposed system are met.

(2) Applications for permits for wastewater treatment systems described in (3) through (7) must include a demonstration that no other alternatives to wastewater disposal are feasible.

(3) Absorption beds may be used for replacement systems only and may not be constructed in unstabilized fill. Absorption beds must also meet the design and construction requirements in department Circular DEQ-4, 2002 edition.

(4) Seepage pits may be used for replacement systems only, and only when no other means of treatment and disposal is available.

(a) Seepage pits must have a minimum vertical separation of 25 feet between the bottom of the pit and groundwater.

(b) Permit applications for seepage pits must include plans for the proposed pit. Seepage pits must meet the design and construction requirements in department Circular DEQ-4, 2002 edition.

(5) Holding tank systems may be approved only if the facility to be served is for seasonal use.

(a) For purposes of this rule "seasonal use" means use for not more than a total of four months (120 days) during any calendar year. Permit applications for holding tanks must show that the property use conforms to the "seasonal use" limitation or that a variance has been granted.

(b) Holding tanks must meet the design and construction requirements in department Circular DEQ-4, 2002 edition.

(c) Permit applications for holding tanks must include plans for the proposed holding tank system. The plans must include the following information:

(i) the method for monitoring tank levels;

(ii) the method for waterproofing the tank;

(iii) a maintenance plan, which must include annual water tightness testing and periodic pumping by a licensed septic tank pumper; and

(iv) the method for tank stabilization if seasonal high groundwater is expected to be within 12 inches of tank's base.

(6) Sealed pit privy systems may be approved only if the facility to be served does not have a piped water supply, and the facility is a seasonal-use recreational site.

(a) Permit applications for sealed pit privies must include plans for the proposed sealed pit. Sealed pit privy systems must meet the design and construction requirements in department Circular DEQ-4, 2002 edition.

(7) Unsealed pit privies may be approved only for seasonal use in remote locations that are not accessible to septic tank pumpers.

(8) New construction or alteration of cesspools is prohibited.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule V is proposed to replace portions of the current ARM 17.36.907. The new rule clarifies the design standards in the current rules for absorption beds, seepage pits, and holding tanks. The new rule also requires that these systems be designed in accordance with department Circular DEQ-4, which is discussed below. Clarification and expansion of the design requirements for these systems is necessary to identify the proper construction methods to prevent pollution of state waters. The stakeholders advisory group recommended adding design standards for these systems so that they could be used for problem solving on difficult sites or for replacement systems.

Subsection (7) limits the use of unsealed pit privies to seasonal use in remote locations. This limitation is necessary to prevent pollution caused by unsealed pit privies. The new rule makes other minor changes in wording to the current rule.

Adoption of New Edition of Circular DEQ-4

A summary of the differences between the 2000 and 2002 editions of DEQ-4 follows:

Department Circular DEQ-4 was first adopted in December 2000. This design manual for subsurface wastewater treatment systems replaced previous circulars that had not been revised for almost 10 years. When the 2000 version of DEQ-4 was adopted, the department committed to perform periodic review and revision of the Circular to incorporate new technology in

wastewater treatment. The review of this manual was recently completed by a stakeholders advisory group. Draft revisions to the Circular were informally circulated to local health departments, environmental consultants, wastewater treatment manufacturers and equipment suppliers, property owner organizations, and other interested parties. The revisions to the Circular are necessary to incorporate the results of this cooperative effort. The advisory group has also incorporated design suggestions in the new EPA Onsite Wastewater Treatment Manual published and distributed in 2002. A copy of the proposed new Circular is available from the department.

Chapter 1, Applicability

The term "sewage" has been replaced with the term "wastewater" to conform to the terminology in the regulations. Several types of systems were added to the Circular to address failing systems and to provide problem-solving techniques for difficult and remote sites. These systems include: absorption beds, seepage pits, holding tanks, and pit privies.

Chapter 2, Definitions

Several definitions were added or revised to provide clarity and to conform to the terminology in the regulations.

Chapter 3, Site Evaluation

The requirement for percolation tests was eliminated based on research that indicates the soil information should provide a better correlation to infiltration rate for domestic wastewater effluent. The percolation test may still be required by rule or, in the case of the county minimum standards, by the reviewing authority to verify soils information or when variable soils are present.

Chapter 4, Site Modifications

Several design changes are proposed for site modifications based on the field experience of the advisory group members.

Chapter 5, Wastewater Flow

Clarification was provided regarding using actual flow data due to confusion with the previous language. The wastewater flow tables were consolidated into two tables and several categories were added using flows from actual data and the advisory group's field experience with these types of systems.

Chapter 6, Design of Sewers

Several sections required further clarifications based on questions received on the previous language.

Chapter 7, Septic Tanks

The sizing of nonresidential septic tanks in the current Circular is problematic and is proposed to be revised to more closely match industry design standards and residential flow volumes. Other language was changed to provide clarity.

Chapter 8, Standard Absorption Trenches

This section was moved to chapter 8 and the section regarding dosed systems was moved to chapter 9 because standard trenches are more frequently used. ASTM F810 HDPE piping was removed as a selection for distribution lines based on the failure of this piping to provide adequate distribution of effluent and structural integrity.

The application rate tables for sizing drainfields were revised based on numerous comments on this section. The tables were developed using a combination of national research, county regulations, previous regulations, comparing other states' standards, and are similar to the example table in the EPA Onsite Wastewater Treatment Systems Manual.

Chapter 9, Dosing System

Minor changes were made to this section to provide further clarification.

Chapter 10, Deep Absorption Trenches

The depth of the distribution pipe was clarified in this section.

Chapter 11, At-Grade Absorption Trenches

The separation distance between the scarified layer and a limiting layer was clarified in this section.

Chapter 12, Sand-Lined Absorption Trenches

The changes to this section are for clarification purposes.

Chapter 13, Gravelless Absorption Trenches

In this section, the advisory group added structural requirements for gravelless chambers. The drainfield sizing was further clarified to prevent confusion in sizing drainfields. The change in sizing the drainfield may result in slightly larger or smaller drainfields in some circumstances. However, the change from a 1.4 increase in application rate to a 25% reduction should result in fewer errors in calculating the reduction.

Chapter 14, Elevated Sand Mounds

This section was updated based on the 2000 version of the Wisconsin Mound Soil Absorption System Siting, Design, and Construction Manual. Other minor editing changes were made to clarify design criteria.

Chapter 15, Intermittent Sand Filters

Several specifications were changed in this section based on the advice of the advisory group members that have built and regulated these systems. A requirement for an operation and maintenance plan was added.

Chapter 16, Recirculating Sand Filters

Several specifications were changed in this section based on the advice of the advisory group members that have built and regulated these systems. The size of the recirculating tank was increased based on the recommendations in the EPA Manual. A requirement for an operation and maintenance plan was added.

Chapter 17, Recirculating Trickling Filters

The drainfield sizing was reduced for this type of system based on research and the recommendations of the advisory group. Maintenance requirements were further clarified in Appendix D.

Chapter 18, Evapotranspiration Absorption Systems

This section was revised to provide more flexibility in design of these systems. A requirement for an operation and maintenance plan was added.

Chapter 19, Evapotranspiration Systems

The changes to this section are clarifications except that a requirement for an operation and maintenance plan was added.

Chapter 20, Aerobic Wastewater Treatment Units

Minor clarifications were made to this section. The requirement for primary treatment was added based on the recommendation of the advisory group. The requirement for an operation and maintenance plan was moved to Appendix D.

Chapter 21, Chemical Nutrient-Reduction Systems

The new EPA Manual was referenced and the operation and maintenance requirements were moved to Appendix D.

Chapter 22, Experimental Systems

The funding requirement was removed because the reviewing authority does not regulate funding for these systems. The monitoring and inspection requirements were clarified.

Chapter 23, Absorption Bed Design

This section was added for design of absorption bed systems. These systems are allowed only in limited situations in accordance with the regulations.

Chapter 24, Holding Tanks

This section was added to address design requirements for holding tanks. These systems are allowed only in limited situations in accordance with the regulations.

Chapter 25, Sealed (Vault) Pit Privy Design

This section was added to address design requirements for sealed pit privies. These systems are allowed only in limited situations in accordance with the regulations.

Chapter 26, Unsealed Pit Privy Design

This section was added to address design requirements for unsealed pit privies. These systems are allowed only in limited situations in accordance with the regulations.

Chapter 27, Seepage Pits

This section was added to address design requirements for seepage pits. These systems are allowed only in limited situations in accordance with the regulations.

Appendix A, Percolation Test Procedure I and II

Minor clarifications were provided in this section. The requirement that the percolation test be completed by an individual approved by the reviewing authority was added for consistency with county regulations and to prevent acceptance of test results that were performed inaccurately. The requirement for a 12-hour soil swell period was eliminated. The advisory group recommended that the 12-hour soil swell period was not necessary and did not significantly change the percolation test results.

Appendix B, Soils and Site Characterization

Minor editing corrections were made in this section.

Appendix C, Ground Water Observation Well Installation and Measuring Procedures

The requirement that ground water observation wells be monitored by an individual approved by the reviewing authority was added for consistency with county regulations and to prevent acceptance of test results that were performed inaccurately. The flagging and identification of wells was added to help the reviewing authority locate and identify wells during inspections.

Appendix D, Operation and Maintenance Plan

This section was added to clarify operation and maintenance requirements for wastewater treatment systems. EPA has recommended that wastewater treatment systems receive routine maintenance. Certain types of systems, especially those with mechanical or other operating parts, should be periodically inspected and serviced as necessary.

NEW RULE VI HORIZONTAL SETBACKS, FLOODPLAINS

(1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1
SETBACK DISTANCES

	Sealed components (1) and other components (2)	Absorption systems (3)
Public or multi-user wells/springs	100	100
Other wells	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (4)	25
Slopes > 25% (5)	10 (4)	25
Property boundaries	10	10
Subsurface drains	10	10
Water lines	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10
Surface water, Springs	50	100
Floodplains	--(1) 100 (2)	100

(1) Sealed components include sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, pumping chambers, holding tanks and sealed pit privies. Holding tanks and sealed pit privies must be located at least 10 feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.

(2) Other components include intermittent and recirculating sand filters, package plants, and evapotranspiration systems.

(3) Absorption systems include absorption trenches, absorption beds, sand mounds, and other drainfield type systems that are not lined or sealed. This term also includes seepage pits and unsealed pit privies.

(4) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.

(5) Down-gradient of the sealed component, other component, or drainfield/sand mound.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality nondegradation requirements indicate a need for the greater distance.

(3) If the floodplain has not been designated and its level relative to a wastewater system is in question, the applicant shall submit evidence adequate to allow the reviewing authority to establish the location of the floodplain.

(4) Sealed components of wastewater treatment systems, if located within a 100-year floodplain, must be designed and constructed to prevent surface water and ground water inundation, and pump lines must be pressure tested prior to use. The minimum test pressure must be five times the operation pressure.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule VI recodifies the horizontal setback distances from the current ARM 17.36.907. Minor changes to the setbacks are proposed to make them conform to those in the department subdivision regulations. Conformity with subdivision regulations is necessary to avoid having to unnecessarily replace existing systems when an owner wants to subdivide the property.

NEW RULE VII PERMITS (1) The reviewing authority shall administer a permit system for the construction, alteration, repair, and extension of wastewater treatment and disposal systems.

(2) Permit applications must:

(a) identify the owner of the system, location of the system, and type of system to be installed;

(b) provide a justification for the type of system proposed;

(c) include a drawing of the lot layout with legend and scale; and

(d) show separation distances for the features indicated in [NEW RULE VI].

(3) The reviewing authority shall maintain records of all permits.

(4) For permits for new or increased sources, the reviewing authority shall show on the permit the method used for the non-significance determination made pursuant to ARM Title 17, chapter 30, subchapter 7.

(5) For permits issued for replacement of wastewater treatment systems that do not meet minimum standards for subdivisions as set out in ARM Title 17, chapter 36, subchapter 3, the reviewing authority shall notify the owner that the design may limit the ability of the owner to subdivide the property.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: The provisions of new rule VII are new. Most counties in Montana have adopted a permitting system to implement these regulations. The permitting procedures set out in this rule are necessary to provide guidelines for implementing a permitting system and to establish consistency among permit programs throughout the state.

NEW RULE VIII LOCAL VARIANCES (1) As provided in this rule, a local board of health, as defined in 50-2-101, MCA, may grant variances from the requirements in this subchapter and in department Circular DEQ-4, 2002 edition.

(2) The local board of health may grant a variance from a requirement only if it finds that all conditions in these rules regarding the variance are met, and that granting the variance will not:

(a) contaminate any actual or potential drinking water supply;

(b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;

(c) cause a public health hazard by being accessible to persons or animals;

(d) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter except for the rule that the variance is requested from;

(e) pollute or contaminate state waters, in violation of 75-5-605, MCA;

(f) degrade state waters unless authorized pursuant to 75-5-303, MCA; or

(g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

(3) The local board of health may adopt variance criteria in addition to those set out in (2).

(4) The local board of health's decision regarding a variance of a requirement in this subchapter or in department Circular DEQ-4, 2002 edition, may be appealed to the department pursuant to [NEW RULE IX].

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule VIII codifies the provisions of the current variance rule at ARM 17.36.910, with some proposed changes. Subsection (1) is new, and is necessary to clarify that the local board of health may grant variances both from the rules in this subchapter and from the requirements of department Circular DEQ-4. Subsection (2) modifies the variance conditions in the current rule to be identical with the general requirements set out in new rule III (the current ARM 17.36.902). This modification is necessary to ensure consistency between variance criteria and the general minimum standards set out in new rule III. Subsection (3) is new, and allows local boards of health to adopt variance criteria in addition to those set out in this rule. This provision is necessary to clarify that the variance criteria in this rule are not exclusive.

NEW RULE IX VARIANCE APPEALS TO THE DEPARTMENT

(1) Upon receiving an appeal of a local board of health's variance decision under 75-5-305, MCA, the department shall determine within 30 days whether the appeal meets the requirements of (2) and notify the appellant in writing of its determination.

(2) The appeal to the department must be in writing and must provide the following information:

(a) the name of the appellant;

(b) the local government entity or entities that made the decision on the application for variance at the local level;

(c) a summary explanation of the project or development for which the variance is requested;

(d) a summary explanation of the variance that is sought;

(e) a statement of the law or ordinance at issue in the matter; and

(f) copies of all applications and supporting materials submitted to the local board of health, and of any written decisions issued by the local board of health.

(3) If the appeal does not fulfill the requirements of (2), the department shall state in its notice to the appellant the deficiencies that must be addressed in a resubmittal. The department shall also notify the appellant in writing when its submittal meets the requirements of (2).

(4) If the appeal fulfills the requirements of (2), the department shall conduct a hearing on the appeal.

(5) The hearing must be conducted under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. Except as provided in (7), the department must conduct the hearing within 90 days of the department's written notice to the appellant that the appeal meets the requirements of (2).

(6) The department shall review each application under ARM Title 17, chapter 4, subchapter 6 to determine if the department's action may result in significant effects to the quality of the human environment, thereby requiring an environmental impact statement.

(7) If the department's analysis indicates that an environmental impact statement is required, the department shall have 60 days from the date of issuance of the final environmental impact statement to conduct a hearing under this rule.

(8) After conducting the hearing, the department may allow up to 14 days for written comments to be submitted concerning the appeal.

(9) The department shall apply the local government variance requirements at issue in the case, provided the requirements meet the minimum requirements stated in [NEW RULES III and VIII].

(10) The department shall issue a formal decision, including findings of fact and conclusions of law, within 30 days after the hearing.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: New rule IX recodifies the current ARM 17.36.909 without change except to update the citation to the

department's rules implementing the Montana Environmental Policy Act.

4. ARM 17.36.901 through 17.36.903 and 17.36.907 through 17.36.910 are being proposed for repeal and are located at pages 17-3425 through 17-3434 of the Administrative Rules of Montana. The reasons for the proposed repeals are set forth in the reasons for proposed new rules I through IX.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., November 27, 2002. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request that includes the name and mailing address of the person to receive notices regarding any of the following topics: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulations; hard rock (metal) mine reclamation; major facility siting; open-cut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us, or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

BY: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State October 7, 2002.